IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.5584 OF 2005

Tolabai w/o.Pavji Mali .. Petitioner

v/s.

Noorjaha Begum Bashir Ahmed .. Respondent

Mr.P.N.Joshi for the petitioner.

Mr.C.G.Gawnekar for the respondent.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 21st September, 2005

P.C.

The petitioner challenges the orders of the trial court and the appellate court. The trial court has passed an exparte decree. The appellate court has found that the judgment of the trial court requires to be set aside on all grounds and the matter needs to be remanded. However, on the point of default in payment of rent, the appellate court was of the view that no case was made out for a remand on this issue. The appeal was therefore dismissed.

2. The petitioner disputes having received the notice of demand. It is her case that she has not received it. This fact is contested by the respondent by claiming that she refused to accept the notice. It was necessary for the trial court to ascertain whether in fact, the petitioner had refused to accept the notice. The trial court has observed in para 12 of its order as, "Though the fact can be gathered as appearing on record that

defendant was not served with the notice so she was not in a position to deposit the rent tendered rate within one month." Obviously, therefore, the question whether the petitioner had, in fact, received the notice, is a matter which needs to be decided on the basis of evidence.

3. In my view, therefore, it would be appropriate to remand the matter back to the trial court for decision on all issues. The order of the appellate court dismissing the appeal is set aside. The trial court to hear and dispose of the suit on all issues within a period of six months from today.

4. Petition disposed off accordingly.

(SMT.NISHITA MHATRE, J.)